IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.660 OF 1994

Shri Ashok Laxman Jere, .. Petitioner

Vs

Shri Kishor Dhanaji Godse and Anr. .. Respondents

Shri Mahesh Subramaniam, for the petitioner.

None for the respondents.

CORAM : D.B.BHOSALE,J.

DATE : 29.11.2005.

PC:

1. Heard the learned counsel for the petitioner. None appears for the respondents.

2. This petition is directed against the orders passed by the courts below in the proceedings arising from Exhibit-5 application. The trial Court in Dispute No.617/1992, by order dated 10.12.1992, had granted injunction restraining original opponent nos 1 an 2, who are the petitioner and respondent no.2 respectively in the instant writ petition, from transferring or dealing with the suit premises and from preventing or

obstructing the respondent no.1- disputant from carrying out the construction in the suit premises. That order was challenged in Appeal, bearing Appeal No.9/1993 by the petitioner-original opponent no.2. The appeal court dismissed the appeal with the following observations:

> "However, it is made clear that any construction caused by the disputant-respondent no.1 herein during the pendency of the dispute shall be at his costs and risk and shall be subject to the decision of a dispute. The lower court is directed to decide the dispute application itself expeditiously preferably within a period of six months from the date of this order.
>
> Parties are directed to appear before the lower Court on 7.12.1993 on which date the opponent shall file written statement."

3. This Court, while issuing rule on 11.8.1994, allowed respondent no.1 to raise further construction only with the prior permission of the Court. The learned counsel appearing for the petitioner has no instructions as to whether the dispute is still pending. There was no stay to the further proceedings of the dispute. There is no reason why the dispute should remain pending before the trial Court and it must have been disposed of by now, and even if it is not disposed of and is still pending, in my opinion, the following order shall meet the ends of justice.

(i) The trial Court shall dispose of the Dispute,

bearing Dispute No.617/92, if still pending, as expeditiously as possible, preferably within a period of six months from the date of receipt of this order.

(ii) Pending the dispute, the respondent shall not raise further construction without prior permission of the trail Court.

(iii) The trial Court shall dispose of the Dispute, if not disposed of already, on merits in accordance with law and uninfluenced by the orders passed in the proceedings arising from Exhibit-5 application. The rule is accordingly disposed of.

(D.B.Bhosale,J.)